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## INTERNATIONAL ARBITRATION

THE history of the race whether considered as one of individuals or as nations has been one of struggle. Did one individual fancy another had done him a wrong, he proceeded to right that wrong himself by the exercise of force. From the day when Cain killed his brother Abel, for many centuries contests between individuals were settled, not as justice dictated, but by brute force. The result was a disorderly condition of society unfavorable to peaceful conditions. In the evolution of the race, when men differed, instead of attempting to settle their differences by force, tribunals were brought into being for that purpose and as the result of this process courts were established for the purpose of administering justice between disputants. So successfully has this worked that no intelligent community exists without its courts, and no man or woman of a high degree of intelligence any longer thinks of resorting to physical force for the purpose of righting a real or fancied wrong. This growth has been so helpful, lawyers are inclined to adopt the words of a distinguished member of the American Bar Association when he declared: "The crowning triumph of our present civilization is in the successful establishment and maintenance of our existing courts of justice. It is the perfection of these that makes property possible and life worth living. It is the existence of these and the respect paid to them by the community that makes social life and the perpetuation of social institutions practical. It is to our courts of justice more than to any other institution of modern civilization that we owe all that lifts modern man above the barbarity of his primitive ancestors."

The life of nations has been much more strenuous than that of individuals. If one reads the current histories of the nations he reads almost constantly of war. All know of the terrific struggle waged

between the forces of the North and the South from 1861 to 1865, which cost the North not less than five thousand millions of dollars, and the lives of three hundred thousand of its bravest and best citizens. While the confederacy did not lose quite so many lives its material loss owing to the destruction of property was even greater than that of the North. Though more than forty years have gone by since the termination of that mighty struggle its scars are not yet healed. The country is still cheerfully paying more than a hundred and sixty millions of dollars annually to its brave veteran soldiers and there are yet many homes which refuse to be comforted.

As late as the first half of the last century the condition of a captured city would be fitly described by Shakespeare's lines:

"The gates of mercy shall be all shut up,  
And the flushed soldier rough and hard  
In liberty of bloody hand shall range  
With conscience wide as hell."

But recently in the far east two great nations were engaged in a terrific contest. During two weeks almost eighty thousand brave men turned their pallid faces to the sky—dead—while a much larger number are suffering wounds inflicted by the butchery of war. Mourning spread its sable wings over the vast dominion ruled by the Czar and throughout fair Japan as well.

For a time the entire world with bated breath wondered whether because of the Balkan crisis all Europe was to be plunged into war. The sobriety of the leading nations of Europe at the time of the exciting events of last fall and early winter is a striking illustration of the growth of the peace sentiment.

Mulhall's statistics state: "In the past century more than four and a half million men have laid down their lives in combat between the civilized nations of the world at an expense of fifteen billion dollars."

It is gratifying to know that none of our great men led us willingly into war. Washington, Lincoln, Grant and Sherman alike deprecated it. The great Sherman said of it, "War is hell."

Is the prophecy "Men shall beat their swords into plough-shares and their spears into pruning hooks, nation shall not lift up sword against nation, neither shall they learn war any more" never to come true?

Fair minded men and loving women have questioned for ages can there be no way to settle differences between nations except by the dread arbitrament of the sword? Why cannot an international tribunal be established to which the disagreements of nations may be

referred and settled the same as courts now settle differences between persons? Many men are seeking for an affirmative answer to these questions.

The first peace congress ever held convened fifty-eight years ago in the city of Paris. It was presided over by Victor Hugo. It was assembled in the interest of universal peace. A good many Americans attended it, among them that learned scholar and able divine James Freeman Clarke. Amasa Walker was there and the learned blacksmith Elihu Burritt who made an eloquent address. Accompanying the four or five hundred delegates from Great Britain was Richard Cobden, the great English statesman, who lifted his potent voice in an address of remarkable power. It is said one of the addresses so eloquently portrayed the blessings of peace and so dramatically described the horrors of war that Victor Hugo with tears in his eyes embraced the speaker and declared that if the rulers of the earth could hear that address there would be no more war.

Dr. Edward Everett Hale in writing of this meeting said: "One of the humors of the occasion was a joke of the third Napoleon. By way of testifying his respect for the movement, he gave such orders that an armed sentry paced up and down in front of the hall by way of showing the interest of the government in the meeting. But that was the way then—one might almost say now—of showing in Europe what are government affairs. In my day a sentry paced up and down in front of the British museum. One of the signs of awaking civilization in England is that sentry has been withdrawn."

I have already spoken of the war of the rebellion. During the progress of that war the ruling classes of Great Britain were without doubt actuated by the hope that the rebellion would succeed and this nation be rent in twain. In violation of its duty and in contravention of international law it allowed the steamer Alabama to be constructed and sent out to prey upon our commerce, doing it an immense amount of harm. When the war was over our government very properly made a demand upon the British government for restitution. Its demands were not conceded and the world wondered whether the dogs of war were to be again let loose among English speaking peoples. Fortunately wise counsel was heeded, an arbitration board was brought into existence, the claims of the respective governments were submitted to it. A judgment passed for a very large sum in favor of the United States and was subsequently paid. Valuable as was this large sum of money, it was insignificant when compared with the value of the demonstration that these two great peoples had found a method of settling their differences without resorting to war.

On October 31, 1888, thirty members of the French Chamber of Deputies and ten members of the English Parliament met at a small hotel in Paris to discuss the project of an arbitration treaty between France, England and the United States. Those present agreed that members of all the parliaments should meet occasionally to discuss questions of common interest to all civilized nations alike, and an invitation was immediately issued for a general conference during the Paris Exposition in the following year. This was the first inter-parliamentary conference and the first feeble attempt at a world's "parliament of man." A great part of the press received its declarations in favor of international peace with derision and satire, but the movement grew, and the second conference in London in 1890, was attended by a much larger number of deputies from the various countries. At the third conference in 1891 at the Capitol Building at Rome, delegates from Germany and Austria-Hungary appeared for the first time, and with ever increasing attendance conferences were successfully held at Berne, Brussels, The Hague, Budapest, Christiana, Paris and Vienna."

The twelfth of the meetings of the Inter-Parliamentary Union was held at St. Louis in September, 1904, in connection with the World's Fair, and was attended by philanthropists, men and women from all over the world. Congress, at the request of the President, placed at the disposal of those having it, in charge, fifty thousand dollars to defray expenses.

It is probable that one of the most important meetings ever held was the one held in 1899. On the 24th of August, 1898, the Czar of all the Russias issued a circular to all representatives of foreign nations in St. Petersburg, requesting a conference for the purpose of "uniting in one mighty sheaf; the efforts of all those states which sincerely seek to make the great conception of universal peace triumph over the elements of disturbance and discord."

In conformity with the request thus made by the Czar of Russia, twenty-six nations, among them the leading nations of the earth, appointed ninety-six delegates. The Queen of Holland requested the conference to meet at The Hague, and the delegates met at that capitol May 18, 1899. Prominent among the nations represented were the United States, Great Britain, Russia, Germany and France.

Upon the committee of international arbitration from the United States was that accomplished scholar and able diplomatist, Andrew D. White, the ex-mayor of Brooklyn and New York and then president of Columbia College, Mr. Seth Low.

The distinctive and important features of this convention were numerous. First, it provided for the establishment of a permanent

court of arbitration which shall always be open, with a permanent office and officers, charged with the performance of the administrative functions of the court. Second, this court is clothed with the power of determining the extent of its jurisdiction under the agreement of submission and any treaties which may be in force relating to the subject, and also of regulating its procedure whenever the parties do not agree upon special rules which shall be binding for the particular controversy. Third, provision is made for what the convention designates "special mediation." Fourth, there is also a provision authorizing any of the signatory powers to call to the attention of the states engaged in a controversy the existence of the court of arbitration, and the obligations which the signatory powers have taken upon themselves by agreeing to the convention.

As long ago as 1896 that great educator, President Eliot, late of Harvard, said "the first and principal contribution (by the United States to civilization) is the advance made in the United States, not in theory only, but in practice, toward the abandonment of war as the means of settling disputes between nations, the substitution of discussion and arbitration, and the avoidance of armaments. If the intermittent Indian fighting, and the brief contests with the barbary corsairs be disregarded, the United States have had only four years and a quarter of international war in the one hundred and seven years since the adoption of the Constitution. Within the same period the United States have been a party to forty-seven arbitrations."

"The questions settled by these arbitrations have been just such as have commonly caused war, namely, questions of boundaries, fisheries, damages inflicted by war, of civil disturbances, and the injuries to commerce. Some of them were of great magnitude, the four made under the treaty of Washington (May 8, 1871) being the most important that have ever taken place. Confident in their strength and relying upon their ability to adjust international differences, the United States have habitually maintained by voluntary enlistment for short terms, a standing army and a fleet which in proportion to the population are insignificant."

Since these words were spoken we have added to the list of arbitrations.

In the course of the seven years following the first Hague conference, writes Professor Lammach, one of the members of that tribunal, in the Dutch Review, more than thirty arbitration treaties have been signed and ratified. All the European powers except Russia have concluded such compacts.

It now can be said that since the Jay treaty was signed, upwards

of six hundred and thirty disputes between nations have been settled by arbitration. In a large proportion of these cases, had not arbitration been adopted and accepted, war would have resulted.

The submission of the important dispute about which our cousins on the north, the Canadians, showed so much heat, five years ago, the Alaskan boundary, a dispute which under the old regime would have plunged us into war was a notable instance. The newspapers give us the welcome intelligence that the fisheries question which has been such a disturbing one between Canada, Great Britain and the United States is to be submitted this summer to the Hague tribunal. When this is done the result reached will be accepted and the growing bonds of friendship between Great Britain, Canada and the United States will be greatly strengthened.

Another instance was the peaceful solution of the Venezuelan dispute. Another was the settlement by arbitration of the affair which three years ago threatened war between Great Britain and Russia, called the North Sea incident.

Some of the delegates to the St. Louis meeting upon their way there called upon the President at Washington, who in his characteristic fashion spoke of his interest in the success of their efforts. In the course of the interview he expressed his intention to soon issue a call convening the Hague conference.

On October 25th, 1904, the Department of State dispatched notes to our ambassadors and ministers abroad, looking to a reconvening of the Hague conference. An invitation from the President of the United States to the signatory powers of the original Hague treaty to come together again for the purpose of broadening and strengthening the original convention and especially to consider means to further ameliorate the horrors of modern warfare and to conserve and extend the rights of neutral commerce on the high seas, was sent.

All the powers signatory to the Hague conference indicated a willingness to join in another convention. Out of deference to the expressed wish of the Czar of Russia, instead of the President making the call it was left to the Czar to again convene the conference. All of the powers accepted the invitation of Emperor Nicholas, and the conference was in session at the Hague from June 15th until October 18, 1907. In many respects the conference was disappointing but nevertheless it was an important meeting. It established an international prize court with a right of appeal either to a court of appeal within the captors country or to the international court at the Hague; and a long step was taken toward the creation of a court of arbitral justice. It is probable that court will be established before the next meeting which will be held about the year 1915. This court

would doubtless have been established at the last meeting had it not been for the attitude of Germany.

Fifteen or sixteen years ago I had the honor to be a member of a commission appointed by the President of the United States to select lands for the permanent reservations of the mission Indians of California. The chief value of that experience to me was the fact that for six months I was thrown into daily contact with a private citizen of New York who was president of the commission and one of the purest and ablest men I have ever known, Mr. Albert K. Smiley. He was then just establishing his winter home at Smiley's Heights, Redlands, which has become one of the most beautiful places of the Pacific Coast. Mr. Smiley and his wife have no children. They have one of the most unique and successful summer hotels in the world at Lake Mohonk, New York. They are both greatly interested in philanthropic work. They are quakers in belief. In 1894 Mr. and Mrs. Smiley invited a large assemblage of eminent men and women to be their guests at Lake Mohonk to devise means to create public opinion in the interest of international arbitration. Like meetings have been held yearly at their call. The first one of these I was able to attend was held in June, 1905. It was presided over by Federal Circuit Judge Gray, to whom this nation owes a debt of gratitude for his efficient aid in helping, at the request of President Roosevelt, to settle the conflict between the coal barons and their employes and who is to do another notable service as a member of the court which is to settle the fisheries controversy of which mention has been made. More than three hundred eminent men and women participated in the conference.

Three years ago the conference was presided over by Hon. John W. Foster, one of the most accomplished diplomats and an acknowledged authority upon international law. All creeds and callings were represented. Among those present who addressed the meeting was Cardinal Gibbons, the highest dignitary of the Roman Catholic church in America. From the same platform spoke Dr. Barrows, a Unitarian, and Dr. Lyman Abbot a Congregationalist.

The meeting held in May, 1907, was presided over by Hon. Nicholas Murray Butler, President of Columbia University, who delivered a very able address. Last year Hon. John W. Foster again presided over the conferences. There attend these conferences judges of the Supreme Court of the United States, of the Supreme Courts of many of the states. United States senators and congressmen, editors of leading newspapers and magazines, many of the most prominent clergymen of the country, some of the judges of the Hague Court,

ministers from foreign governments, officers of the army and navy, representatives from more than sixty boards of trade and chambers of commerce from the leading cities of the country. The schools, colleges and universities of the country are becoming organized. These powerful forces assemble for the purpose of aiding the movement to establish international arbitration. It is the theory of Mr. Smiley and those who meet at these conferences that until an international court of arbitration is established and obligatory arbitration adopted it is an idle dream to hope for disarmament or for universal peace.

The possibilities which may follow the successful establishment of an arbitral court may be realized in part when we recall present conditions. The following statement appears in the World Almanac for the year 1909:

"The net cost of the British army and its operations, according to estimates for 1908-09, will amount to \$138,800,000, while the cost of maintaining the navy will approximate \$170,000,000. The United States army budget for the past fiscal year amounted to over \$103,000,000, and for the navy nearly \$104,000,000. The military expenditure of the German Empire entered in the budget for 1908-09 amounted in all to \$206,000,000, while the estimate for the navy was \$83,000,000. The estimated cost of maintaining the French army in 1907 is \$189,000,000, and the navy \$64,000,000. Italy during the present fiscal year expects to spend \$29,000,000 on her navy, and a still larger sum on the army. The Russian navy estimates for 1908-09 are nearly \$49,000,000, and those of Austro-Hungary nearly \$12,000,000. Previous to the war with Russia the military expenditure of Japan was less than \$25,000,000. The expenditure during the war from October, 1903, to May, 1905, amounted to \$500,000,000 for the army and \$90,000,000 for the navy. The total naval estimate for Japan for 1908-09 amounts to \$40,000,000."

Charles Edward Jefferson in the March number of the Atlantic Monthly graphically describes present conditions as follows:

"Germany has in a single generation, increased her national debt from eighteen million dollars to more than one billion dollars. The German minister of finance looks wildly round in search of new sources of national income. Financial experts confess that France is approaching the limit of her sources of revenue. Her deficit is created by her army and navy. The British government is always seeking for new devices by means of which to fill a depleted treasury. Her Dreadnoughts keep her poor. Italy has for years staggered on the verge of bankruptcy because she carries an overgrown army on

her back. Even our own rich republic faces this year a deficit of over a hundred million dollars, largely due to the one hundred and thirty millions we are spending on our navy. Mr. Cortelyou has called our attention to the fact that while in thirty years we have increased our population by 85 per cent. and our wealth by 185 per cent. we have increased our national expenses by 400 per cent."

"It is within those thirty years that we have spent one billion dollars on our navy. And the end is not yet. The Secretary of the Navy has recently asked for twenty-seven new vessels for the coming year, four of which are battleships at ten million dollars each, and he is frank to say that these twenty-seven are only a fraction of the vessels to be asked for later on. We have already, built or building, thirty-one first class battleships, our navy ranking next to Great Britain, Germany standing third, France fourth, and Japan fifth."

No one who is observant of world conditions hopes for universal peace at once, nor for entire disarmament at any time, for the seas as well as the lands must be policed and guarded against the lawless, and a reasonably large navy and army will be required for that purpose. It is, however, fairly certain that if a court of international arbitration is established and the United States, Great Britain, France, Germany and the Russias would sign treaties of obligatory arbitration the expenses for increasing and maintaining the armies and navies of those powers could at once be cut in two. Then the day of universal peace would not be far away.

Is this too much for which to hope?

Secretary Meleny in the announcement of the Second National Peace Congress soon to meet in Chicago states: "At the second Hague conference, thirty-five powers, representing 1,285,272,000 inhabitants, voted for general obligatory arbitration; four powers, representing 55,562,000 inhabitants, refrained from voting; while only five powers, representing 167,436,000 inhabitants, voted against. Thus has the civilized world, by the vote of the official representatives of nearly nine-tenths of its population, declared itself in favor of obligatory arbitration as a substitute for war. More than eighty treaties of obligatory arbitration have been concluded between the nations in Paris within the last five years, our own country being a party to twenty-four of them."

The rulers of the leading nations of the earth profoundly desire peace. The financiers of the world want peace. The business interests of the world want peace. The Christian men and women everywhere want peace. The most powerful forces operating in every nation are back of the international arbitration and peace move-

ments, and in the fullness of time they will be brought to successful issues.

I am sure we all hope that the words of John Addington Symonds may soon come true :

“Nation with nation, land with land,  
Unarmed shall live as comrades free ;  
In every heart and brain shall throb  
The pulse of one fraternity.”

“New arts shall bloom of loftier mould,  
And mightier music thrill the skies ;  
And every life shall be a song  
When all the earth is Paradise.”

JOSEPH B. MOORE.

SUPREME COURT, LANSING.